

Department of Energy

970.2903-2

policy should contain voluntary coverage for all occupational diseases.

(3) *Contractor “employees’ benefit plan”—self-insurers.* The policies and requirements set forth in paragraph (a)(2) of this section apply where management and operating contractors purchase workers’ compensation insurance. With respect to self-insured contractors, the objectives specified in paragraph (a)(2) also shall be met through primary or excess workers’ compensation and employers’ liability insurance policy(ies) or an approved combination thereof. “Employees’ benefit plans” which were established in prior years may be continued to contrast termination at existing benefit levels.

(b) *Assignment of responsibilities.* (1) Office of Resource Management, within the Headquarters procurement organization, other officials, and the Heads of Contracting Activities, consistent with their delegations of responsibility, shall assure management and operating contracts are consistent with the policies and requirements of paragraph (a) of this section.

(2) In discharging assigned responsibility, the Heads of Contracting Activities shall—

(i) Periodically review workers’ compensation insurance programs of management and operating contractors in the light of applicable workers’ compensation statutes to assure conformance with the requirements of paragraph (a) of this section.

(ii) Evaluate the adequacy of coverage of “self-insured” workers’ compensation programs;

(iii) Provide arrangements for the administration of any existing “employees’ benefit plans until such plans” are terminated; and

(iv) Submit to the Office of Resource Management, within the Headquarters procurement organization, all proposals for the modification of existing “employees’ benefit plans.”

(3) The Office of Resource Management, within the Headquarters procurement organization, is responsible for approving management and operating contractor “employees’ benefit plans.”

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36372, July 22, 2009]

970.2803-2 Contract clause.

The contracting officer shall insert the clause at 970.5228-1, Insurance—Litigation and Claims, in all management and operating contracts. Paragraphs (h)(3) and (j)(2) of that clause apply to a nonprofit contractor only to the extent specifically provided in the individual contract.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36372, July 22, 2009]

Subpart 970.29—Taxes

970.2902 Federal excise taxes.

970.2902-3 Other Federal tax exemptions.

(a) The exemption respecting taxes on communication services or facilities has been held to extend to such services when furnished to Department of Energy (DOE) management and operating contractors who pay for such services or facilities from advances made to them by DOE under their contracts.

(c) Where it is considered that a request for an additional exemption in the performance of a management and operating contract would be justified, a recommendation that such a request be made should be forwarded to the Chief Financial Officer, Headquarters.

(d) Where tax exemption certificates are required in connection with the taxes cited in this section, the Head of the Contracting Activity will supply standard Government forms (SF 1094, U.S. Tax Exemption Certificate) on request.

[65 FR 81009, Dec. 22, 2000. Redesignated and amended at 74 FR 36372, July 22, 2009]

970.2903 State and local taxes.

970.2903-2 Application of State and local taxes to the Government.

It is DOE policy to secure those immunities or exemptions from state and local taxes to which it is entitled under the Federal Constitution or state laws. In carrying out this policy, the Heads of Contracting Activities shall—

(a) Take all necessary steps to preclude payment of any taxes for which any of the immunities or exemptions

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cited in this subpart are available. Advice of Counsel should be sought as to the availability of such immunities or exemptions; and

(b) Acquire directly and furnish to contractors as Government furnished property, equipment, material, or services when, in the opinion of the Head of the Contracting Activity—

(1) Such direct acquisition will result in substantial savings to the Government, taking into consideration any additional administrative costs;

(2) Such direct acquisition will not have a substantial adverse effect on the relationship between DOE and its contractor; and

(3) Such direct acquisition will not have a substantial adverse effect on the DOE program or schedules.

[65 FR 81009, Dec. 22, 2000. Redesignated and amended at 74 FR 36372, July 22, 2009]

970.2904 Contract clauses.

970.2904-1 Management and operating contracts.

(a) Pursuant to 48 CFR 29.401-4(b), the clause at 48 CFR 52.229-10, State of New Mexico Gross Receipts and Compensating Tax, is applicable to management and operating contracts that meet the three conditions stated. The contracting officer shall modify paragraph (b) of the clause to replace the phrase “Allowable Cost and Payment” with the phrase “Payments and Advances.”

(b) Contracting officers shall include the clause at 970.5229-1, State and Local Taxes, in management and operating contracts.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36373, July 22, 2009]

Subpart 970.30—Cost Accounting Standards Administration

970.3002 CAS program requirements.

970.3002-1 CAS applicability.

The provisions of 48 CFR part 30 and 48 CFR chapter 99 (FAR Appendix) shall be followed for management and operating contracts.

48 CFR Ch. 9 (10-1-11 Edition)

Subpart 970.31—Contract Cost Principles and Procedures

970.3101-00-70 Scope of subpart.

(a) The Senior Procurement Executive is responsible for developing and revising the policy and procedures for the determination of allowable costs reimbursable under a management and operating contract, and for coordination with other Headquarters’ offices having joint interests.

(b) The Head of the Contracting Activity is responsible for following the policy, principles and standards set forth in this subpart in establishing the compensation and reimbursement provisions of contracts and subcontracts and for submission of deviations for Headquarters consideration and approval.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36373, July 22, 2009]

970.3101-9 Advance agreements.

(i) At any time, in accordance with the contract terms and conditions, the contracting officer may pursue an advance agreement in connection with any cost item under a contract.

970.3101-10 Indirect cost rate certification and penalties on unallowable costs.

(a) Certain contracts require certification of the costs proposed for final payment purposes. Section 970.4207-03-02 states the administrative procedures for the certification provisions and the related contract clause prescription.

(b) If unallowable costs are included in final cost settlement proposals, penalties may be assessed. Section 970.4207-03-02 states the administrative procedures for penalty assessment provisions and the related clause prescription.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36373, July 22, 2009]

970.3102-3-70 Home office expenses.

(a) For on-site work, DOE’s fee for management and operating contracts, determined under the policy of and calculated per the procedures in 970.1504-1-3, generally provides adequate compensation for home or corporate office general and administrative expenses